

REISSUE APPLICATION DECLARATION AND POWER OF ATTORNEY  
(BY INVENTOR(S) OR ASSIGNEE)

(complete A or B)

A. ☒ DECLARATION BY THE INVENTOR(S)

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor (*if only one name is listed below*) or an original, first and joint inventor (*if plural names are listed below*) of the subject matter that is described and claimed in letters patent number 5,551,445, granted on September 3, 1996, and for which invention I solicit a reissue patent on the invention entitled Apparatus and Method for Movement Coordination Analysis

the specification of which

☒ is attached hereto.☐ was filed on \_\_\_\_\_, as reissue application number / and was amended on \_\_\_\_\_ (*if applicable*).☐ I hereby declare that there is no assignee for this application.

NOTE: "Where no assignee exists, applicant should affirmatively state that fact. If the file record is silent as to the existence of an assignee, it will be presumed that no assignee exists." M.P.E.P., 6th ed., rev. 1, § 1410.01.

B. ☐ DECLARATION BY ASSIGNEE

NOTE: The assignee of the entire interest may make the declaration, if the reissue application does not seek to enlarge the scope of the claims of the original patent. 37 C.F.R. § 1.172.

(type or print name of declarant)

Title

of \_\_\_\_\_,  
Name of company or legal entity on whose behalf declarant is authorized to sign

declare that I am a citizen of \_\_\_\_\_ and resident of \_\_\_\_\_,

\_\_\_\_\_, that the entire title to letters patent number \_\_\_\_\_,

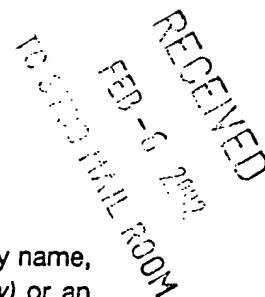
for \_\_\_\_\_,

granted on \_\_\_\_\_, 19\_\_\_\_ to \_\_\_\_\_

Inventor(s)

is vested in \_\_\_\_\_  
Name of company or legal entity

that I believe said named inventor(s) to be an original, first and sole inventor (*if only one name is listed*) or an original, first and part inventor (*if plural names are listed*) of the subject matter that is described and claimed in the aforesaid letters patent and in the foregoing specification and for which invention I solicit a reissue patent.



# ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

(37 C.F.R. § 1.175)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information that is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

- ☐ In compliance with this duty, there is attached an information disclosure statement in accordance with 37 C.F.R. § 1.98.

## PRIORITY CLAIM

*NOTE: A "claim" for the benefit of an earlier filing date in a foreign country under 35 U.S.C. 119(a)-(d) must be made in a reissue application even though such a claim was made in the application on which the original was granted. However, no additional certified copy of the foreign application is necessary. M.P.E.P., 6th ed., rev. 1, § 1417.*

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

(complete C or D)

- C. ☒ No such applications have been filed.  
D. ☐ Such applications have been filed as follows:

### EARLIEST FOREIGN APPLICATION(S), IF ANY FILED WITHIN 12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO SAID APPLICATION

| Country | Application No. | Date of filing<br>(day, month, year) | Date of issue<br>(day, month, year) | Priority<br>Claimed   |
|---------|-----------------|--------------------------------------|-------------------------------------|---|
|         |                 |                                      |                                     | <input type="checkbox"/> YES    NO <input type="checkbox"/> |
|         |                 |                                      |                                     | <input type="checkbox"/> YES    NO <input type="checkbox"/> |
|         |                 |                                      |                                     | <input type="checkbox"/> YES    NO <input type="checkbox"/> |

### ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO SAID APPLICATION

---

---

---

---

### BENEFIT OF PROVISIONAL APPLICATION

---

---

---

**STATEMENT OF INOPERATIVENESS  
OR INVALIDITY OF ORIGINAL PATENT**  
(37 C.F.R. § 1.175)

That I believe the original patent to be

- ☒ partly  
☐ wholly

inoperative or invalid by reason of (37 C.F.R. § 1.175(a)(1)):

*(check all items that may apply)*

- ☐ a defective specification  
☐ a defective drawing  
☒ the patentee claiming more or less than the patentee had a right to claim in the patent.

*NOTE: At least one error must be relied upon as the basis for the reissue. 37 C.F.R. § 1.175(a)(1).*

That the error listed above, which are being corrected, up to the time of the filing of this reissue declaration arose without any deceptive intention on the part of the applicant. (37 C.F.R. § 1.175(a)(2).

*NOTE: For any error corrected not covered by this declaration applicant must submit, before allowance, a supplemental declaration stating that every such error arose without any deceptive intention on the part of the applicant. 37 C.F.R. § 1.175(b)(1).*

- ☐ Corroborating affidavits or declarations of others accompany this declaration.

### POWER OF ATTORNEY

I hereby appoint the following practitioner(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

*(list name and registration number)*

|                                       |                                     |
|---------------------------------------|-------------------------------------|
| Bruce D. Sunstein, Reg. No. 27,234    | Steven G. Saunders, Reg. No. 36,265 |
| Timothy M. Murphy, Reg. No. 33,198    | John J. Stickevers, Reg. No. 39,387 |
| Robert M. Asher, Reg. No. 30,445      | Herbert A. Newborn, Reg. No. 42,031 |
| Harriet M. Strimpel, Reg. No. 37,008  | Jean M. Tibbetts, Reg. No. 43,193   |
| Samuel J. Petuchoski, Reg. No. 37,910 |                                     |

*(check the following item, if applicable)*

- ☐ I hereby appoint the practitioner(s) associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.
- ☐ Attached, as part of this declaration and power of attorney, is the authorization of the above-named practitioner(s) to accept and follow instructions from my representative(s).

---

#### SEND CORRESPONDENCE TO

☒ Address

Timothy M. Murphy  
BROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA 02110

☐ Customer Number \_\_\_\_\_

#### DIRECT TELEPHONE CALLS TO: *(Name and telephone number)*

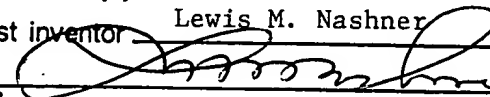
Timothy M. Murphy at (617) 443-9292

## DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

### Signature(s)

☒ **BY THE INVENTOR(S)**

Full name of sole or first inventor Lewis M. Nashner  
Inventor's signature   
Date 8/31/98 Country of Citizenship U.S.A.  
Residence 4011 Coho Lane, Lake Oswego, OR 77034  
Post Office Address Same as residence

Full name of second joint inventor, if any \_\_\_\_\_  
Inventor's signature \_\_\_\_\_  
Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_  
Residence \_\_\_\_\_  
Post Office Address \_\_\_\_\_

☐ **BY ASSIGNEE OR PERSON AUTHORIZED TO SIGN ON BEHALF OF ASSIGNEE**

NOTE: Even though inventor(s) do not sign, complete above information for inventor(s).

(complete the following, if applicable)

\_\_\_\_\_  
(type name of assignee)

\_\_\_\_\_  
Address of assignee

\_\_\_\_\_  
Title of person authorized to sign on behalf of assignee

☐ Assignment recorded in PTO on \_\_\_\_\_

Reel \_\_\_\_\_

Frame \_\_\_\_\_

☐ A separate ☐ "ASSIGNMENT (DOCUMENT) COVER SHEET"  
or ☐ FORM PTO 1595 is submitted herewith along with the assign-  
ment \_\_\_\_\_

### STATEMENT BY ASSIGNEE

- ☒ Attached is a "STATEMENT UNDER 37 C.F.R. 3.73(b)," establishing the right of the assignee to take action in this reissue.

\_\_\_\_\_  
Signature of assignee or person authorized to  
sign on behalf of assignee

*(check proper box(es) for any added page(s) forming a part of this declaration)*

- ☐ Signature for third and subsequent joint inventors. Number of pages added. \_\_\_\_\_
- ☐ Signature by administrator(trix), executor(trix) or legal representative for deceased or incapacitated inventor. Number of pages added. \_\_\_\_\_
- ☐ Signature for inventor who refuses to sign or cannot be reached by person authorized under 37 C.F.R. § 1.47. Number of pages added. \_\_\_\_\_
- ☒ Statement of inoperativeness or invalidity of original patent. 37 C.F.R. § 1.175. Number of pages added 1
- ☐ Authorization of attorney(s) to accept and follow instructions from representative.
- ☐ Corroborating statements of others.

The patent claims less than I had a right to claim. I failed to appreciate that my invention was not previously claimed with sufficient scope.

I have developed numerous methods and products for diagnosing causes of balance disorders. I have obtained ten U.S. patents, including U.S. Patent Nos. 4,738,269, 5,052,406 and 5,269,318, and the present patent, U.S. Patent No. 5,551,445 is the fourth in this series. Support for the invention may be found in U.S. Patent Application Serial No. 408,184, filed August 16, 1982, and from which each of the four patents in this series claims priority under 35 U.S.C. § 120. The methods set forth in these four patents diagnose balance disorders by providing false information to the soles of the subject's feet and, in some embodiments, to the subject's eyes.

Until recently, I believed that these four patents would clearly cover a method such as that set forth in the attached article, Shumway-Cook, A. and Horak, F.B., "Assessing the Influence of Sensory Interaction on Balance / Suggestion from the Field," The Journal of American Physical Therapy Assn., Vol. 66, No. 10, October 1986. Earlier this year, I learned that the method set forth in this article was being commercialized. An analysis of my patents, unfortunately, did not uncover any claim that would appear to literally cover the method set forth in the attached Shumway-Cook article, despite the fact the method set forth in that article clearly used novel aspects of my invention. Therefore, I believe that, in the present patent, U.S. Patent No. 5,551,445, my invention was not fully and properly claimed to the extent to which I was entitled. New claims 10-14 more fully and properly claim my invention.

This error arose because the patent attorneys who prepared and prosecuted the application leading to the present patent did not fully appreciate the scope of my invention, and because I did not appreciate how limiting were the claims that issued. This error arose without any deceptive intention.